

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 10/IBC/NCLT/MB/MAH/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Bank of Baroda

..... Financial Creditor
(Petitioner/Applicant)

V.

Shalibhadra Cottrade Private Limited.

..... Corporate Debtor
(Respondent)

Heard on: 10.10.2019

Pronounced on: 22.10.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

For the Petitioner : Advocate Manoj Mishra

For the Respondent : Anuja Bhansali i/b Raval Shah & Co.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. This Petition is originally filed by Dena Bank. However, it is noted that a merger of Vijaya Bank and Dena Bank with Bank of Baroda has taken place vide Government Notification dated 02.01.2019 w.e.f 01.04.2019. Hence, this petition is now amended, and the name of Dena Bank is substituted by Bank of Baroda as the Applicant/Financial Creditor.
2. The Petitioner/Applicant viz. 'Bank of Baroda (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 01.01.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Shalibhadra Cottrade Private Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be B-81, Cotton Exchange Building, 1st Floor, Cotton Green, Mumbai.
3. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹8,50,00,000/-, and the amount claimed to be in default is

₹9,22,75,212/- as on 16.12.2018. The date of default is stated to be 31.05.2018. The loan account of the Corporate Debtor was declared as Non-Performing Asset on 01.10.2018.

SUBMISSIONS BY THE FINANCIAL CREDITOR

4. The Financial Creditor has sanctioned a Cash Credit Facility of ₹1,50,00,000/- in January 2012. The sanctioned amount was increased over a period of time to an extent of ₹8,50,00,000/- as on 10.03.2017.
5. The Financial Creditor submits that the Corporate Debtor hypothecated its book debts of ₹24.50 crore to secure the loan amount. The guarantors of the Corporate Debtor have executed collateral security by way of simple mortgage on 30.03.2017 on certain properties to secure the loan of ₹14 crore to Shalibhadra Traders and ₹8.50 crore to the Corporate Debtor.
6. The guarantors have executed Letter of Guarantee dated 31.03.2017 for ₹8.50 crore in favour of Dena Bank for the loan sanctioned to the Corporate Debtor as Cash Credit. The Petitioner further submits that the Corporate Debtor has executed a promissory note dated 31.03.2017 in favour of Financial Creditor for an amount of ₹8.50 crore.
7. The petitioner states that the debt was disbursed from 05.01.2012 till 31.05.2018 and the Corporate Debtor failed to repay the loan amount. Hence, loan account of the Corporate Debtor was declared NPA on 01.10.2018.
8. The Financial Creditor sent the recall notice dated 08.10.2018 for payment of dues to the extent of ₹8,94,81,430/- along with uncharged interest from 01.10.2018 which remained unanswered by the Corporate Debtor. Hence, the Financial Creditor initiated DRT proceedings against the Corporate Debtor.
9. The Petitioner draws the attention of this Bench towards the Dena Bank Statement of Account of the Corporate Debtor which reveal the debit balance of the Corporate Debtor as on 29.09.2018 to be ₹8,94,81,430/-.
10. The Petitioner has computed the default amount by adding unserved interest till 16.12.2018 which comes to a total of ₹9,22,75,212/-.
11. The Financial Creditor submits that the Statement of Accounts of the Corporate Debtor have been produced on record in order to corroborate the claim filed by the Corporate Debtor.

12. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

SUBMISSIONS BY THE CORPORATE DEBTOR

13. The contention of the counsel for the Corporate Debtor was that the loan account of the Corporate Debtor has wrongly been declared as NPA because of the fact that 90 days time period is to be given after default to declare the loan account as NPA. It is submitted that the last deposit in the loan account was done on 04.08.2018 for an amount of ₹10,000/- by Mr. Ravindra Khona, Director of the Corporate Debtor. It is stated that the loan account was declared NPA on 01.10.2018 which was wrong in law.
14. Further, it was argued that the amount of ₹9,22,75,212/- claimed in the petition is not reflected in the bank statement of the Corporate Debtor. An objection has been raised regarding the percentage rate of interest by stating that Facility Agreement on record provides for an interest @12.35% however, the Petitioner in its rejoinder has calculated interest @12.8 %.

REJOINDER BY THE PETITIONER

15. To answer the contentions of the Corporate Debtor, the Petitioner submits that the loan account of the Corporate Debtor was consistently in excess of the sanctioned credit limit of ₹8,50,00,000/- and the status of account was consistently NPA. Further, with respect to the claim amount, the Petitioner submits that the loan agreement provides for penal rate of interest @ 2%, hence, the amount of ₹9,22,75,212/- has been arrived at after adding the penal rate of interest.

FINDINGS

16. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, this Bench came across a contention made by the Corporate Debtor, that loan account of the Corporate Debtor has wrongly been declared NPA. However, this is not corroborated by facts as the Financial Creditor namely Bank of Baroda has declared the loan account of the Corporate Debtor as NPA as it was consistently in excess of the sanctioned credit limit of ₹8,50,00,000/-. The two

essentials being 'debt' and 'default' have been established in this petition. Thus this contention of the Corporate Debtor is outrightly rejected.

17. Further, regarding the dispute as to the default amount, the Letter of 'Enhancement of Cash Credit Limit from ₹700.00 lacs to ₹850.00 Lacs' provides that the bank may charge interest @ 12.35% and penal rate of interest to be 2%. Hence, it cannot be said that the amount claimed in this petition is wrong. The contention that claimed amount is not reflected in the Bank Statement is a defence raised only for the sake of raising a defence, having no weight. Hence, argument rejected. It is further clarified that existence of dispute regarding the claim amount is no ground to reject a Section 7 petition under the I&B Code.
18. It is considered that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has not denied its liability to repay but is only raising spurious defences in reply to this petition. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
19. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.
20. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves 'Admission'.
21. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
22. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Vikas Prakash Gupta, having registration No. IBBI/IPA-007/IP-P00501/2017-18/10889, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

23. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
24. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
25. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
26. The Petition is hereby “Admitted”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
27. Ordered Accordingly.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Dated : 22.10.2019

J

Sd/-

M.K. SHRAWAT
MEMBER (JUDICIAL)